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**UNITED STATES DISTRICT COURT**  
**FOR THE NORTHERN DISTRICT OF CALIFORNIA**

BRANDON SIMPSON

Plaintiff,

v.

CITY AND COUNTY OF SAN  
FRANCISCO, a municipal corporation;  
JOHN FERGUS, individually and in his  
capacity as a City of San Francisco Police  
Officer; THOMAS BUCKLEY, individually  
and in his capacity as a City of San Francisco  
Police Officer; ELIZABETH MORSE,  
individually and in her capacity as a City of  
San Francisco Police Officer; ANDREW  
CLIFFORD, individually and in his capacity  
as a City of San Francisco Police Officer;  
DOES 1-50, inclusive.

Defendants.

Case No.: 3:17-cv-133

COMPLAINT FOR DAMAGES

(42 U.S.C §§ 1983)

(Cal. Civ. Code §52.1)

(Cal. Penal Code §242)

JURY TRIAL DEMANDED

## **INTRODUCTION**

1  
2 1. This action arises out of the unlawful arrest and beating of Brandon Simpson by  
3 City of San Francisco Police Officers John Fergus, Thomas Buckley, Elizabeth Morse and  
4 Andrew Clifford in the Tenderloin district of San Francisco.

5 2. At approximately 11 p.m. on December 1st, 2015, Mr. Simpson was peacefully  
6 gathered with a group of people on the corner of Taylor and Eddy in the Tenderloin District.  
7 There were no reports or complaints regarding the group when Officers Fergus and Buckley  
8 brought their patrol car to a sliding stop in front of the group. In response, the group, including  
9 Mr. Simpson, began to disperse. To that end, Mr. Simpson began casually walking up the street  
while holding nothing but a water bottle in his hand.

10 3. Without warning, Officer Buckley grabbed Mr. Simpson from behind. Then  
11 Officers Buckley, Fergus, Clifford and Morse tackled him to the ground. Next the Officers  
12 began to punch and knee Mr. Simpson. Video footage of the incident shows the four officers on  
13 top of Mr. Simpson punching and kneeling him without remorse while he was lying flat on the  
ground.

14 4. In an effort to justify the Officers' excessive use of force, the Defendant Officers  
15 concocted a completely fabricated story about their encounter with Mr. Simpson. The Officers  
16 claimed he ran, fought and actively resisted being brought into custody. The Officers repeated  
17 their false accounts in their police reports and on the witness stand during the course of the  
18 Federal prosecution against Mr. Simpson. Fortunately, the Officers' lies were exposed when a  
19 videotape surfaced that contradicted the Officers' claims. After reviewing the videotape, United  
20 States District Court Judge Breyer dismissed the bogus criminal charges and recommended  
21 Officer Buckley be disciplined for his misconduct.

## **JURISDICTION**

22  
23 5. This action arises under Title 42 of the United States Code, Section 1983. The  
24 unlawful acts and practices alleged herein occurred in the City and County of San Francisco,  
25 California, which is within this judicial district. Title 28 United State Code Section 1391 (b)

1 confers venue upon this Court.

2  
3 **PARTIES**

4 10. Plaintiff BRANDON SIMPSON ("Simpson") is a competent adult, a resident of  
5 OAKLAND, CALIFORNIA, readily recognizable as an AFRICAN-AMERICAN male, and is a  
6 United States Citizen.

7 11. Defendant CITY AND COUNTY OF SAN FRANCISCO ("hereinafter  
8 Defendant") is and at all times herein mentioned is a municipal entity duly organized and  
9 existing under the laws of the State of California that manages and operates the CITY OF SAN  
10 FRANCISCO POLICE DEPARTMENT.

11 13. Defendant JOHN FERGUS (Badge No. 1943), was and at all times mentioned  
12 herein is a police officer for the City of San Francisco, and is sued in his individual and official  
13 capacity.

14 14. Defendant NICHOLAS BUCKLEY (Badge No. 528), was and at all times  
15 mentioned herein is a police officer for the City of San Francisco, and is sued in his individual  
16 and official capacity.

17 15. Defendant ELIZABETH MORSE (Badge No. 1268), was and at all times  
18 mentioned herein is a police officer for the City of San Francisco, and is sued in her individual  
19 and official capacity.

20 16. Defendant ANDREW CLIFFORD (Badge No. 2388), was and at all times  
21 mentioned herein is a police officer for the City of San Francisco, and is sued in his individual  
22 and official capacity.

23 17. Plaintiff is ignorant of the true names and/or capacities of defendants sued herein  
24 as DOES 1 through 50, inclusive, and therefore sue said defendants by such fictitious names.  
25 Plaintiff will amend this complaint to allege his true names and capacities when ascertained.  
Plaintiff believes and alleges that each of the DOE defendants is legally responsible and liable  
for the incident, injuries and damages hereinafter set forth. Each defendant proximately caused  
injuries and damages because of their negligence, breach of duty, negligent supervision,



1 management or control, violation of public policy, and false arrests. Each defendant is liable for  
2 his/her personal conduct, vicarious or imputed negligence, fault, or breach of duty, whether  
3 severally or jointly, or whether based upon agency, employment, ownership, entrustment,  
4 custody, care or control or upon any other act or omission. Plaintiff will ask leave to amend this  
complaint subject to further discovery.

5 18. In doing the acts alleged herein, Defendants, and each of them acted within the  
6 course and scope of their employment for the City and County of San Francisco.

7 19. In doing the acts and/or omissions alleged herein, Defendants, and each of them,  
8 acted under color of authority and/or under color of law.

9 20. Due to the acts and/or omissions alleged herein, Defendants, and each of them,  
10 acted as the agent, servant, and employee and/or in concert with each of said other Defendants  
11 herein.

12 21. Plaintiff filed a state claim of action for their state causes of action and received a  
13 letter of rejection from the Defendant City and County of San Francisco on July 11, 2016.

#### 14 **STATEMENT OF FACTS**

15 22. At approximately 11 p.m. on December 1st, 2015, Mr. Simpson was peacefully  
16 gathered with a group of people on the corner of Taylor and Eddy in the Tenderloin District.

17 23. Nevertheless, without receiving any reports or complaints about the group, San  
18 Francisco Police Officers decided to detain and/or arrest the group in order to investigate their  
19 hunch the young men were engaged in playing craps. To that end, Officers kept the group under  
20 surveillance until they abruptly brought their patrol cars to a sliding and screeching stop in front  
21 of the group. The group dispersed with some of the young men running while others walked  
22 away.

23 25. Officers Buckley and Fergus jumped out of their patrol car and began running  
24 toward the group. Mr. Simpson was casually walking up the street when he overheard Officer  
25 Buckley said something to the effect of "What's going on, guys" to the dispersing group.

1           26.     Mr. Simpson continued to casually walk away and was holding nothing but a  
2 water bottle in his hand when Officer Buckley seized him from behind. Next, Officers Buckley,  
3 Fergus, Morse and Clifford tackled Mr. Simpson to the ground where they began to beat, punch  
4 and knee him as he lay on the ground.

5           27.     Once Mr. Simpson was placed in handcuffs, he immediately began to complain  
6 about the injuries he suffered to his head and upper body. It was only after the Defendant  
7 Officers began to panic about the consequences of the beating they administered did they claim  
8 to have found a gun that was supposedly concealed in a sock that was reportedly in the general  
9 vicinity where Mr. Simpson was beaten. Mr. Simpson vociferously denied that the gun belonged  
10 to him and made a point of reminding the Officers there were several other people besides him  
11 who were also in close proximity to gun based upon where they claim they found it.

12           28.     Officer Buckley wrote a sworn, detailed report that fabricated his encounter with  
13 Mr. Simpson in order to justify the officers' unlawful arrest and use of excessive force. Officer  
14 Buckley claimed in his perjured version of events: he ran in front of Mr. Simpson; that he made  
15 contact with Mr. Simpson three times and that each time Mr. Simpson evaded the officer by  
16 moving up and down the street; that he asked Mr. Simpson multiple questions; that Mr. Simpson  
17 kept his hands near his waistband and refused to show his hands to Officer Buckley; that Mr.  
18 Simpson attempted to run away; and that Mr. Simpson was walking with a limp as if he was  
19 trying to conceal a gun.

20           29.     Officer Buckley reaffirmed each and every point of this perjured story a second  
21 time when the officer testified in federal court before Federal Judge Breyer during an evidentiary  
22 hearing. Officer Buckley went so far as to describe the incident using an aerial map of the street  
23 corner and marker to denote each and every detail of his false narrative during his court  
24 testimony.

1           30.     In contradiction to Officer Buckley's fabricated description of events, a  
2 surveillance video showed Mr. Simpson casually walking with a water bottle in his hand when  
3 Officer Buckley suddenly seized Mr. Simpson from behind. The video goes on to show the  
4 group of Defendant Officers tackle and beat Mr. Simpson while he was on the ground. In light  
5 of the foregoing, Judge Breyer dismissed the bogus criminal charges. Judge Breyer was  
6 apparently so offended by Officer Buckley's conduct he encouraged the U.S. Attorney to hand  
7 over the evidence to the San Francisco Police Department in order for the officer to be  
8 disciplined for perjury. Judge Breyer also remarked that had it not been for video footage of the  
9 incident, he would have believed Officer Buckley, which would have ultimately resulted in Mr.  
10 Simpson being unjustly convicted and subject to a lengthy prison sentence.

11           31.     As a result of the officers' unconstitutional arrest, Mr. Simpson was physically  
12 and emotionally injured along with suffering pecuniary and emotional injuries while he was in  
13 custody defending against the trumped up charges.

### 14                                   **DAMAGES**

15           32.     As a proximate result of Defendants' conduct, Plaintiff suffered wrongful  
16 detention and arrest. As a further proximate result of Defendants' conduct, Plaintiff suffered  
17 physical injury, loss of wages, emotional distress, fear, terror, anxiety, humiliation, and loss of  
18 sense of security, dignity, and pride as a United States Citizen.

19           33.     The conduct of the Defendant Police Officers was malicious, wanton, and  
20 oppressive. Plaintiff is therefore entitled to and award of punitive damages against said  
21 Defendant Officers.



**CAUSES OF ACTION**

**FIRST CAUSE OF ACTION**

**(Fourth Amendment – Detention and Arrest under 42 U.S.C. Section 1983)**  
*(Against Defendants John Fergus, Thomas Buckley, Elizabeth Morse, Andrew Clifford and DOES 1-25)*

34. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 33 of this complaint.

35. At the time Defendant Officers seized Plaintiff, officers did not have reasonable suspicion to justify the detention nor did they have probable cause to make an arrest. Officers simply seized Plaintiff from behind, forced him to the ground, beat Plaintiff into submission, arrested and imprisoned him, which violated Plaintiff's right to be secure in his person against unreasonable searches and seizures as guaranteed to Plaintiff under the Fourth Amendment to the United States Constitution.

36. The Defendant Officers detained Plaintiff without reasonable suspicion and arrested him without probable cause, in violation of their training and the law. As a result of their misconduct, all these Defendant Officers are liable for Plaintiff's injuries, either because they were integral participants in the wrongful detention and arrest, or because they failed to intervene to prevent these violations.

WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

**SECOND CAUSE OF ACTION**

**(Fourth Amendment – Excessive Force under 42 U.S.C. Section 1983)**  
*(Against Defendants John Fergus, Thomas Buckley, Elizabeth Morse, Andrew Clifford and DOES 1-25)*

37. Plaintiff hereby re-alleges and incorporates by reference paragraphs 1 through 36 of this Complaint.

38. When the Defendant Officers beat Plaintiff during an unlawful detention and arrest, they deprived Plaintiff of his right to be secure in his person against unreasonable searches and seizures as guaranteed to Plaintiff under the Fourth Amendment to the United States Constitution. The Defendant Officers' actions were excessive and unreasonable,

1 especially because officers did not have a lawful basis to detain Plaintiff when the four  
2 Defendant Officers piled on top of Plaintiff, kneed and punched Plaintiff without cause, which  
3 violated their training and Plaintiff's constitutional rights under the Fourth Amendment.

4 39. As a result of their misconduct, each of the Defendant Officers is liable for  
5 Plaintiff's injuries, either because they were an integral participant in, or failed to intervene in,  
6 the conduct described above;

7 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

8 **THIRD CAUSE OF ACTION**  
9 **(Municipal Liability for Unconstitutional Custom or Policy (Monell)—42 U.S.C. section**  
10 **1983)**

11 *(Against Defendant CITY AND COUNTY OF SAN FRANCISCO and DOES 26-50)*

12 40. Plaintiff hereby re-alleges and incorporates by reference herein paragraphs 1-39  
13 of this complaint.

14 41. Plaintiff is informed and believes and thereon alleges that high ranking  
15 CITY AND COUNTY OF SAN FRANCISCO officials, including Defendants, and DOES 26-  
16 50, and/or each of them, knew and/or reasonably should have known about acts of misconduct  
17 by Defendants, and DOES 1-25, and/or each of them.

18 42. Despite having such notice, Plaintiff is informed and believes and thereon alleges  
19 that Defendants, and DOES 1-50, and/or each of them, approved, ratified, condoned, encouraged  
20 and/or tacitly authorized the continuing pattern and practice of misconduct and/or civil rights  
21 violations by said officers.

22 43. Plaintiff is further informed and believes and thereon alleges that as a result of the  
23 deliberate indifference, reckless and/or conscious disregard of the misconduct by Defendants,  
24 and DOES 1-50, and/or each of them, encouraged these officers to continue their course of  
25 misconduct, resulting in the violation of Plaintiff's rights as alleged herein.

44. As against Defendant CITY AND COUNTY OF SAN FRANCISCO,  
Defendants and/or DOES 1-50 in his/their capacity as police officer(s) for the CITY AND  
COUNTY OF SAN FRANCISCO, Plaintiff further alleges that the acts and/or omissions  
alleged in the Complaint herein are indicative and representative of a repeated course of



1 conduct by members of the CITY OF SAN FRANCISCO POLICE DEPARTMENT  
2 tantamount to a custom, policy or repeated practice of condoning and tacitly encouraging the  
3 abuse of police authority, and disregard for the constitutional rights of citizens.

4 45. Plaintiff is informed and believes and thereon alleges that the acts and omissions  
5 alleged herein are the direct and proximate result of the deliberate indifference of Defendants  
6 and/or DOES 1-50 in his/their capacity as police officer(s) for the CITY AND COUNTY OF  
7 SAN FRANCISCO, and each of them, to repeated acts of misconduct, which were tacitly  
8 authorized, encouraged or condoned by the Defendants and/or DOES 1-50 in his/their capacity  
9 as police officer(s) for the CITY AND COUNTY OF SAN FRANCISCO, and each of them.

10 46. The injuries and damages to Plaintiff as alleged herein were the foreseeable and  
11 proximate result of said customs, policies, patterns and/or practices of Defendants and/or  
12 DOES 1-50 in his/their capacity as police officer(s) for the CITY AND COUNTY OF SAN  
13 FRANCISCO, and each of them.

14 47. Plaintiff is informed and believes and thereon alleges that the damages sustained  
15 as alleged herein were the direct and proximate result of municipal customs and/or policies of  
16 deliberate indifference in the training, supervision and/or discipline of members of the  
17 Defendants and/or DOES 1-50 in his/their capacity as police officer(s) for the CITY AND  
18 COUNTY OF SAN FRANCISCO.

19 48. Plaintiff is further informed and believes and upon such information and belief  
20 alleges that Plaintiff's damages and injuries were caused by customs, policies, patterns or  
21 practices of Defendants and/or DOES 1-50 in his/their capacity as police officer(s) for the  
22 CITY AND COUNTY OF SAN FRANCISCO, and each of them, of deliberate indifference in  
23 the training, supervision and/or discipline of Defendants, and DOES 1-50, and/or each of them.

24 49. The aforementioned customs, policies or practices of Defendants and/or DOES 1-  
25 50 in his/their capacity as police officer(s) for the CITY AND COUNTY OF SAN  
26 FRANCISCO, and each of them, resulted in the deprivation of Plaintiff's constitutional rights.

50. The aforementioned acts and/or omissions and/or deliberate indifference by high  
ranking CITY AND COUNTY OF SAN FRANCISCO officials, including high ranking SAN

1 FRANCISCO POLICE DEPARTMENT supervisors, Defendants, and DOES 1-50, and each of  
2 them, and the aforementioned customs, policies or practices of Defendants and/or DOES 1-50 in  
3 his/their capacity as police officer(s) for the CITY AND COUNTY OF SAN FRANCISCO  
4 resulted in the deprivation of Plaintiff's constitutional rights including, but not limited to, the  
5 following:

- 6 a. The right to be free from unreasonable searches and seizures, as guaranteed  
7 by the Fourth Amendment to the United States Constitution;
- 8 b. The right not to be deprived of life or liberty without due process of law, as  
9 guaranteed by the Fourteenth Amendment to the United States Constitution;
- 10 c. The right to equal protection of the laws, as guaranteed by the Fourteenth  
11 Amendment to the United States Constitution; and/or,

12 51. Said rights are substantive guarantees under the Fourth and/or Fourteenth  
13 Amendments to the United States Constitution.

14 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

15 **FOURTH CAUSE OF ACTION**

16 **(False Arrest/Imprisonment in violation**

17 **of CALIFORNIA CIVIL CODE § 52.1 "The Bane Act")**

18 *(Against Defendants John Fergus, Thomas Buckley, Elizabeth Morse, Andrew Clifford and*  
19 *DOES 1-50)*

20 52. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 51 of this  
21 complaint.

22 53. Defendants' above-described conduct constituted interference, and attempted  
23 interference, by threats, intimidation and coercion, with the Plaintiff's peaceable exercise and  
24 enjoyment of rights, including but not limited to his right to be free from unreasonable search  
25 and seizure, to due process, to equal protection of the laws, to be free from state actions that  
shocks the conscience, and to life, liberty, and property, secured by the Constitution and laws  
of the United States and the State of California, in violation of California Civil Code §52.1.

WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

**FIFTH CAUSE OF ACTION**

**(Assault and Battery – Violation of CALIFORNIA PENAL CODE § 242)**  
*(Against Defendants John Fergus, Thomas Buckley, Elizabeth Morse, Andrew Clifford and DOES 1-25)*

54. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 53 of this complaint.

55. Defendants, while working as police officers for the CITY OF SAN FRANCISCO, and acting within the course and scope of their duties, intentionally struck, grabbed, punched and kneed Plaintiff as well as forced him into handcuffs and imprisoned him without a lawful basis.

56. As a result of the actions of these Defendants, Plaintiff suffered physical injuries. The Defendant Officers did not have legal justification for using force against Plaintiff, and these Defendants' use of force while carrying out their police officer duties was an unreasonable use of force.

WHEREFORE, Plaintiff prays for relief as hereinafter set forth

**JURY DEMAND**

57. Plaintiff hereby demands a jury trial in this action.

**PRAYER**

WHEREFORE, Plaintiff prays for relief, as follows:

1. For general damages in a sum to be proven at trial;
2. For special damages, including but not limited to, past, present and/or future wage loss, income and support, medical expenses and other special damages in a sum to be determined according to proof;
3. For punitive damages in a sum according to proof;
4. For reasonable attorney's fees pursuant to 42 U.S.C. Section 1988;
5. For reasonable attorney's fees pursuant to California Civil Code Section 52.1;
6. For cost of suit herein incurred; and



1           7.       For such other and further relief as the Court deems just and proper.

2  
3   Dated: January \_\_\_\_\_, 2017

**Law Offices of John L. Burris**

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5                               /s/ John L. Burris  
6                               John L. Burris  
7                               Attorneys for Plaintiff  
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